



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 25 September 2024

Session 6



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Pàrlamaid na h-Alba

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CRIMINAL JUSTICE COMMITTEE

24th Meeting 2024, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

Katy Clark (West Scotland) (Lab)

*Sharon Dowey (South Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ron McNaughton (Food Standards Scotland)

Ian McWatt (Food Standards Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Criminal Justice Committee

Wednesday 25 September 2024

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, and welcome to the 29th meeting in 2024 of the Criminal Justice Committee. We have received apologies from Katy Clark. Pauline McNeill is—we hope—attending remotely; she is having some connection issues at the moment. Fulton MacGregor will join the meeting shortly.

Does the committee agree to take agenda item 4 in private?

Members *indicated agreement.*

Subordinate Legislation

Police Service of Scotland (Amendment) Regulations 2024 (SSI 2024/179)

Scottish Criminal Cases Review Commission (Permitted Disclosure of Information) Order 2024 (SSI 2024/220)

10:00

The Convener: Our next item of business is consideration of two negative instruments. I refer members to papers 1 and 2. Do members have any questions on either of the instruments?

Members have no questions. Is the committee content with both instruments?

Members *indicated agreement.*

The Convener: Thank you. That completes our consideration of the instruments.

Food Standards Scotland (Tackling Food Crime)

10:01

The Convener: Our next item of business is an evidence session on food crime. I refer members to paper 3. I intend to allow about 60 minutes for this evidence session.

I am pleased to welcome to the committee Ron McNaughton, who is head of the Scottish food crime and incidents unit at Food Standards Scotland, and Ian McWatt, who is deputy chief executive of the organisation. I extend a warm welcome to you both and thank you for the helpful written evidence that you provided.

I invite Mr McNaughton to make some opening remarks.

Ron McNaughton (Food Standards Scotland): Thank you. First, I offer my thanks to the committee for giving Ian and me the opportunity to provide information on the work that Food Standards Scotland is doing to tackle food crime and its impact on Scotland.

I will give a bit of background. On 1 April 2015, Food Standards Scotland was established as the new public sector food body for Scotland, to protect the health and wellbeing of consumers in relation to issues around food and feed law and food standards. Our key priorities are public health and consumer protection in relation to food. FSS, as we refer to it, is part of the Scottish Administration, but it is independent of the Scottish ministers and of industry. It is accountable to the Scottish Parliament, and it currently reports to the Health, Social Care and Sport Committee.

The Scottish food crime and incidents unit was established in response to the horsemeat incident of 2013 to tackle criminality in food supply chains that have an impact on Scotland. At the time, various reviews suggested that there was a need for improved effectiveness in tackling food crime through enhanced structures, improved intelligence gathering, analysis and dissemination, and improved collaborative working, as well as effective enforcement and punishment of offenders.

Food crime in the United Kingdom is defined as serious fraud and related criminality in food supply chains, and it could include techniques such as adulteration, substitution, misrepresentation of origin, misrepresentation of durability dates, document fraud, unlawful processing and waste diversion. In addition to presenting a significant risk to public health, the economic impact of food crime on the UK is substantial—it is estimated to cost up to £2 billion per year.

The SFCIU, as we call the unit, has dedicated intelligence, analytical and investigation teams, which are mostly made up of former law enforcement officers who have a wealth of experience in investigating crime. Our operational model is either to lead investigations where the criminality is complex or serious and co-ordinate partner agencies' activity with SFCIU activity to achieve the most effective response, or to support partner agencies in their investigations.

FSS is a specialist supporting agency, which means that the unit can report cases directly to the procurator fiscal for consideration of prosecution. We have been successful in our use of Scottish common law—we have tended to report cases under common-law fraud or common-law culpable and reckless conduct where there is a perceived risk to health. That demonstrates how we can use common law to better effect. It also reflects the significance of the criminality and opens more investigatory avenues, such as those relating to proceeds of crime, and, ultimately, it might result in more proportionate sentencing outcomes.

That was evident in the recent successful investigation into Jamie George, who was convicted of culpable and reckless conduct in relation to his distribution of dinitrophenol. DNP is an industrial chemical that is not safe for human consumption under any circumstances, but it was sold by him to individuals who wanted to use it for weight loss. We led a joint investigation, along with Falkirk Council and Police Scotland. Mr George was sentenced to 37 months' imprisonment, which was reduced to 28 months on appeal. We await the result of the proceeds of crime hearing, which is due to take place soon. It is a milestone case in that it is the first of its kind in Scotland and the first investigation for FSS that has led to a successful conviction.

As I mentioned, previous reviews highlighted that there required to be improved effectiveness through enhanced structures, improved intelligence gathering and improved collaborative working, as well as effective enforcement and punishment of offenders. We have been working towards that since the unit was established in 2016, and the Jamie George case and the other cases that are waiting to go to trial are examples of how we are working towards achieving that. If the committee would like to obtain more detailed information after today's evidence session, I would recommend that it consider our "Food crime prevention strategic plan 2024-27" and the "Food Crime Strategic Assessment 2024", which has been jointly produced by FSS and the Food Standards Agency.

Food crime is not a new concept; it has been with us since ancient Greek and Roman times. Although the vast majority of food in the UK is safe

and authentic, the nature of global supply chains means that food crime continues to be a risk. To that end, international collaboration under initiatives such as operation Opson and the Global Alliance on Food Crime remains a crucial part of our work.

The Convener: That was a helpful setting of the scene. I will ask a general question by way of a follow-up to your opening remarks.

You spoke about the importance of collaboration with other agencies, such as the Crown Office and Procurator Fiscal Service and Police Scotland, and you mentioned the work on global supply chains, which brings you into the international context. Could you say a bit more about how those relationships work and how important they are, and perhaps explain some of the challenges that exist, especially with regard to the global or international aspect of tackling food crime?

Ron McNaughton: I will start by giving an example of our work on the global side. We co-lead operation Opson, which is an annual Europol-led operation that aims to tackle unsafe and fake food and drink. In 2019, we were involved in the operation to tackle illegally treated tuna, which is exported and imported all around the world, including into Scotland.

As a small nation, how do we protect consumers? To protect Scottish consumers and Scottish businesses, we need to be in a position to influence global partners. That ties in with the work of the Global Alliance on Food Crime, whose members include Australia, New Zealand, Canada, the US and us. That group is looking to improve capability and capacity globally with regard to information sharing so that we can get a better indication of what risks we are faced with, because we are talking about global food supply chains.

In the tuna case, the tuna in question, which was destined for the canning industry, was being illegally treated with nitrates and nitrites. If you treat tuna with nitrates and nitrites, you can bring it back to life, as it were—you can make it fresh. It goes from a brown colour to a bright red colour, which makes consumers and businesses think that they are dealing with fresh tuna, but that is not the case at all. The European Union estimates that that is a €200 million fraud every year. When we did that operation with another nine countries in 2019, illegally treated tuna was found, although not in Scotland or the UK. It is an on-going problem.

That gives an indication of the risks that we face globally. Although the majority of food in the UK is safe and authentic, we now have global food supply chains, and that is where the difficulty lies.

The Convener: When we talk about the global context, an issue that crosses my mind is the impact of Brexit. Has that had any impact on co-operation arrangements that were previously in place, whether in relation to intelligence and information sharing or even simply the practicalities of the global food supply chain?

Ron McNaughton: Prior to Brexit, we were members of the European food fraud network, which meant that we regularly met the other European member states, and we had access to the administrative assistance system, which was used to share information about food fraud among the regulators in the 32 European member states. That is how we shared information. We were involved in EU joint activity. An example is operation Opson, which I talked about. There is no doubt that not having access to, and not having a seat at the table of, the food fraud network has impacted on our ability to access free-flowing information.

However, to counteract that, we have pretty much muscled our way into initiatives such as operation Opson and EMPACT—the European multidisciplinary platform against criminal threats. We now co-lead that. For example, at last year's meeting, which took place in Tbilisi in Georgia, we made sure that we had a workshop on day 2 and that we tried to direct and influence the activity of the other European member states and their law enforcement agencies. Therefore, even though we are no longer part of the EU, we are still fighting to influence activity and how food fraud is approached from a European perspective.

I would argue that Scotland is probably one of the global leaders in that area, because we have a dedicated unit. We find that the partners are willing to listen to what we have to say, because we can direct them and help and assist them with what, ultimately, we are looking to do, which is to protect consumers and businesses in Scotland through the influence that we can exert.

The Convener: Thank you for that. Ian, would you like to come in?

Ian McWatt (Food Standards Scotland): Yes, thank you. Ron was being modest—we are a small unit, but Scotland certainly punches above its weight. As Ron mentioned, following the horsemeat incident, which generated multiple millions in fraud for a small number of individuals, we have become a global leader in this area. Ron currently chairs the Global Alliance on Food Crime, and we receive engagement and visit requests from people in other countries who want to come and see what we do. Ron and the team have established and forged impressive networks.

You asked about intelligence sharing and the impact of EU exit. Intelligence sharing definitely

took a downturn, but the muscling-in approach that Ron referred to and the engagement that we have had have counteracted that. We have engaged not only with the quads—America, Canada, Australia and New Zealand—but beyond. Our input into global conferences has sparked a huge amount of interest in the techniques and the technology that we use to disrupt—we often find that the disruption approach is the only means that is accessible to us.

10:15

We will be able to say a bit more about the ongoing investigation into vodka, which the committee will be aware of. We suspect that serious organised crime is behind some of that activity, and intelligence sharing is increasingly crucial for successful protection of public health. Crime actors are moving into this space principally because traditional crime routes tend to offer a lot more in the way of penalty and risk, whereas in the food territory, the penalties under food law are less but the gains can be huge.

It is important that the committee realises that food fraud is not a victimless crime. It is clear from the tuna case that Ron mentioned that there are serious public health components to it. There is significant financial gain to be made, because going from tinned tuna to fresh tuna involves a significant multiplier, but tuna that is net caught produces histamine. The canning process removes histamine. If net-caught tuna is treated to make it look like fresh tuna, the histamine is still there and it can present a serious risk to health. We have been extremely successful at disruption and intelligence sharing.

The Convener: Thank you very much—that was fascinating. I will now bring in other members, starting with Russell Findlay.

Russell Findlay (West Scotland) (Con): The witnesses will know better than anyone else here that the nature of what can be counterfeited is limitless—it can be tobacco, tea bags and all sorts of other products. One story that was in the news recently was your seizure of vodka in Coatbridge. The bottles were branded and, to the untrained eye, would have looked legitimate. Will you give us a sense of what is happening with that investigation? Have you since found more bottles from the same group?

Ron McNaughton: The important thing about the vodka is to try to disrupt the activity. While the investigation continues, with support from Police Scotland, it is important to mitigate the risk to consumers and, ultimately, to disrupt the activities of those involved.

Earlier, the convener spoke about partnerships, and I did not get on to that issue, so I apologise for

that. However, the case demonstrates the relationships between Food Standards Scotland, local councils and Police Scotland, as we have all pulled together during the investigation. I can highlight that, so far, local councils have carried out more than 1,600 targeted visits to look for the specific counterfeit vodka that we are concerned about. That is fantastic.

Russell Findlay: Have the 1,600 visits been in all 32 local authority areas?

Ron McNaughton: We have had responses from 30 local authority areas, with 1,600 targeted visits. So far, we have recovered about 230 bottles of vodka, which is not a huge amount but is still significant. The latest recovery was a few weeks ago, and we have not recovered any more since the initial seizure that you mentioned.

Russell Findlay: I might be surmising slightly, but it is possible that some of the stock was sold outwith a retail environment. We do not know, do we?

Ron McNaughton: Alcohol had been a priority for us in our control strategy, and the strange thing was that we had not seen an awful lot of intelligence on counterfeit alcohol, which would suggest that there might have been less of an issue. Clearly, individuals getting ill has flagged up the fact that there is a specific problem that we need to deal with.

Russell Findlay: Were the 230 bottles from one geographical part of Scotland? Were they all from Lanarkshire, or were they from further afield?

Ron McNaughton: They were mostly from the central belt. Most of the bottles were recovered from nine premises in eight local authority areas.

Russell Findlay: Are you working with Police Scotland to try to establish the source? Each retailer will have bought the stock from somewhere. That is the big question.

Ron McNaughton: How FSS is set up provides a huge benefit in that regard. We have an incidents team, so we can look at the incidents from the perspective of food safety and deal with that as a priority—our number 1 priority is to mitigate the risk of anyone else becoming ill. However, at the same time, the investigation continues.

My slight concern is that all roads now lead to counterfeit vodka, because the issue has been so well publicised. A lot of work has been created for us in relation to products that have not been substantiated as being counterfeit. It has been highlighted to us that more counterfeit alcohol is being bought, but, when we go to investigate, we find that the bottles are genuine. We are now in a situation in which everybody thinks that their alcohol is counterfeit.

Russell Findlay: On Monday, the minimum unit price for alcohol will rise from 50p to 65p. There has been speculation that that might provide a further incentive for organised crime groups to start producing fake alcohol. Are you concerned about that? Do you see this particular case as perhaps being a consequence of that?

Ron McNaughton: That has always been a concern. When minimum pricing for alcohol was introduced, there was always a concern that people in certain demographic groups might look for places where they could get cheap alcohol, including cheap vodka. We have to rely on shopkeepers in convenience stores. I know that there are other ways in which such products can be sold—out the back of a van or wherever—but we need to focus on ensuring that convenience stores in Scotland do not stock this stuff and do not get involved in what we would term as a rogue's bargain, with someone selling stuff out the back of a van or wherever. Convenience stores need to buy their stock from legitimate sources.

Russell Findlay: If it is too good to be true, it is.

Ron McNaughton: That is a cliché, but it is pretty much the case. People should consider the price, whether there are any issues with the labelling and whether the bottles and caps look right. For example, is there a seal on the cap? We are trying to get that message out to the public so that consumers are aware that, if they buy something and does not look right, they should report it.

Ian McWatt: Russell Findlay is absolutely right to ask whether we are concerned about the issue. I need to remain conscious of the fact that Food Standards Scotland is a small unit with four investigators. We rely on partnerships with local government, and it is fair to say that local government resourcing challenges are challenging the progress of investigations. Indeed, had it not been for Food Standards Scotland officials being willing to step in right at the start, a large haul of that vodka would have been sold to consumers in Glasgow. We had to step in because the local authority could not find the resources available to respond, so we are concerned about that.

Another important point is that, when people have challenges with their finances, they are probably willing to take more risks in what they purchase in order to try to get more bang for their buck. The vodka that we are talking about is not sold that cheaply—it is sold at the normal price that people would pay at some minimarts—so somebody somewhere is making an awful lot of money while disbenefiting and harming vulnerable groups.

Russell Findlay: It probably costs less than a quid to produce a bottle of fake vodka.

Ian McWatt: I would not want to put a figure on it, but sophisticated technologies, production systems and distribution systems have been put in place. We find that the vodka contains isopropyl. We do not know this, but that could be a legacy of Covid, as a lot of isopropyl was used in handwash during that time, and it is now being put in alcohol. One of the challenges is that we cannot find anywhere in Scotland to test for that. Our staff have had to drive down to Wales to get this stuff tested, which presents a challenge in proceeding with the investigation quickly.

Russell Findlay: Does each batch need to be tested separately, for legal purposes?

Ian McWatt: Absolutely. There are things that we can do quickly, such as a sniff test, because the alcohol will smell off.

Russell Findlay: You can seize products if there are reasonable grounds to suspect that they are fake, and you can then get them tested.

Ian McWatt: Yes. As you have probably seen from our briefing or the public notices that we have put out, the bottles and the labelling are different.

Ron McNaughton: In relation to our approach, we are members of the multi-agency task and delivery board that is chaired by Police Scotland, and there was agreement on Friday that a short-life working group will be set up to consider a strategic response to the vodka issue. The first meeting of that group will be this week. That will undoubtedly open up a lot more assistance for us in gaining access to forensic services and so on. That is good news for all the individuals around the table at Gartcosh.

Russell Findlay: Are the people who are responsible for producing this particular batch likely to be brought to justice?

Ron McNaughton: Of course. I have to be confident in the abilities of our team, which is working with Police Scotland and local authorities. We are following a number of lines of inquiry—which I cannot go into, for obvious reasons—and I am confident that we will get to the bottom of this. Our aim is to go upstream and get to the source: whoever is producing the products. By the same token, we want to mitigate the risk to consumers and ensure that no one else gets ill. We will do that by getting that message out there.

Russell Findlay: The previous meeting that I had with your organisation was with your colleague who is sitting behind you. It was very helpful and insightful, and I drew the conclusion that you focus on two broad areas of work. One relates to those who might be slightly misrepresenting the quality or nature of a product. An example was cited of a company producing a local sea salt that added something to its stock to

maximise its profits. The other area relates to people in organised crime groups that produce stuff that is harmful to health and that deliberately mislead the public. Can you give a percentage breakdown of how much of your work relates to each of those two different areas?

Ron McNaughton: Not really. We find that the majority of food crime is committed by those who already work in the industry. The individuals to whom you alluded stepped over the line because of the pressures that they were placed under. In that case, because the company had to fulfil a major contract with a supermarket, it ended up adding salt from Israel to the salt that it produced in Scotland, so its product was not authentic. That is the worry. There is a line.

However, we also deal with individuals in organised crime groups. The vodka issue is an example of that. You are right that there is that delineation, but all our focus is on that investigation at the moment.

Russell Findlay: Can I ask one more question, convener?

The Convener: You can ask one more and then we will have to move on.

Russell Findlay: FSS can report a case directly to the Crown Office and Procurator Fiscal Service, which is quite a privilege and helps to shortcut processes, and the Crown Office then prosecutes the case in court. Have you found that to be an effective method? Do you get a favourable ear from the Crown Office? I dare say that not every case that you report results in a prosecution.

Ron McNaughton: No, but we have found our approach to be extremely helpful. As I explained, we tend to use Scottish common law, not food law, so we keep things very simple. If there has been no risk to health, we report the person for common law fraud. If there has been a risk to health, we report the person for culpable and reckless conduct. That is what happened in the DNP case. The fiscal service is quite relaxed about that, because it is used to dealing with that type of legislation day in, day out. When we present a case to those standards in order to prove that a crime has taken place, that makes it a lot simpler for the fiscal service.

We have been commended for the standard of our prosecution reports, which you would expect because of the staff in our team. The links with the fiscal service and the procurator fiscal who will prosecute the case have been very effective. It is not all finished once we have reported a case. Folk think that, once a case has been reported, it goes to court, but many more inquiries come from the procurator fiscal, who directs us and says, "I need you to do this, that and the next thing." That approach has been really effective.

Russell Findlay: If no prosecution was brought, could you take civil action against someone?

Ron McNaughton: We would not take civil action, but there is the proceeds of crime aspect, too. If we are dealing with common law fraud, that gives us access to proceeds of crime legislation, too. As I might have mentioned, two cases have gone through the courts with convictions, and another six cases are waiting to go to trial. Of those, two are going on petition and one is on summary—we are still waiting to see whether the others will be on petition, too. Using common law demonstrates how effective we can be in getting more proportionate sentences and getting cases dealt with at the right level.

Russell Findlay: Thank you.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Is there an overlap between your work and that of trading standards? Do you work together or are you entirely separate?

10:30

Ron McNaughton: There is probably more of an overlap with environmental health. Environmental health officers would not be our boots on the ground, but we work closely with environmental health departments in councils on food safety incidents and on food crime. Most of our investigations would be joint investigations. We have a memorandum of understanding with all local councils, which sets out a formula for who leads an investigation. In that respect, the overlap with environmental health is greater, but there are crossovers with trading standards, especially on alcohol.

Rona Mackay: Would trading standards be involved in that?

Ron McNaughton: It has been involved in that, yes.

Ian McWatt: There is a structural reason for that as well because, elsewhere in the UK, trading standards has a greater footprint. That is simply due to how food standards powers are delegated. In local government, environmental health officers are the enforcement officers for food standards and labelling in Scotland. However, in England and Wales, the enforcement officers who deal with that are part of trading standards.

Rona Mackay: That is interesting.

I am interested in the issue of online food and medicine purchases. You mentioned weight loss pills, which is a lucrative market. How do you police that? How do you get to know about—I will just use this term—dodgy products that are being sold to people online? Who alerts you to that?

Ron McNaughton: That can come through in a number of ways. It can come through partner agencies, colleagues at the Food Standards Agency, colleagues around the globe and from Police Scotland. We also operate in partnership with Crimestoppers, which operates 24 hours a day, 365 days a year. We have a Scottish food crime hotline. Any consumer or person working in the industry can pick up the phone at any time of the day or night and they can speak to a person who will pass that information to us in the space of a few hours. That approach has worked very well with law enforcement for a number of years. We have had it in operation for a number of years now, and it has proved to be helpful.

Rona Mackay: Obviously, you will not go into details of the weight loss pills case, but would you have known about that from an individual saying that they have become ill by taking the pills or that they had experienced adverse effects?

Ron McNaughton: That would be how the information came through. We mentioned the vodka investigation. That came to light because people became ill in a lot of cases.

I often say that you will not be a successful food criminal if you make people ill. Things like that end up becoming too hot to handle. Food criminals want to keep under the radar. We are relying on individuals working in the industry becoming aware that something is happening.

Rona Mackay: Has the online food market made your workload a lot heavier? How big a problem is it? Even cookery shows will tell you that, if you cannot get a product in a supermarket, you will be able to get it online. I would not know what was genuine and what was not if it was an unusual product. How much of your work is taken up with that aspect?

Ian McWatt: For every stone that we have turned over, we have found something. I have already said that we are a small unit. Working with Ron McNaughton, I have to prioritise where our resources go. We focus on the areas that will have the most impact, but it is fair to say that criminal actors are using every opportunity. They are very sophisticated and clever, and trying to stay one step ahead is inordinately difficult. In some respects, we are more often than not one step behind because we are relying on intelligence.

Ron McNaughton: I will add one point about the online stuff, which is related to the DNP case in particular. Jamie George was selling that product online. That was not your traditional food fraud case. We have taken that full circle to the point where DNP has been reclassified as a poison. Seeking out those individuals was taking up a lot of our staff time and that of our colleagues covering England, Wales and Northern Ireland.

Now, that is a police problem. As a poison, it is for the police to react to such matters.

Rona Mackay: Would that apply to medicines in general? People buy drugs online. Would that be the same sort of thing?

Ron McNaughton: Medicines is not really our—

Ian McWatt: We focus on food. Other competent agencies, such as Medicines and Healthcare products Regulatory Agency, would be interested in that.

Sharon Dowey (South Scotland) (Con): A lot of the points that I wanted to make have been covered. Are retailers knowingly selling such products or are they unwittingly selling them? You have mentioned it being a mix of the two. We have had the tuna incident, and I also note the Findus incident—that was from a while ago—in which retailers would not have been aware of the horsemeat in the products. However, it sounds to me as though the retailers that are selling the vodka are aware that it is counterfeit, as they are getting it from another source.

Ron McNaughton: It is a mixture. With the tuna example, if businesses are bringing in commodities from abroad, they could very well be victims of crime. My opinion on the vodka is that individuals know that they are selling a counterfeit product. They perhaps did not know that it is harmful before, but they know that now. However, businesses have a duty to provide safe and authentic food—that is their responsibility under the law. If retailers are buying vodka that is not from a reputable dealer or whatever, they should be asking themselves whether what they are providing is safe and authentic. They cannot do that if they do not know their supply chain, where the product is coming from and where it is being produced.

Ian McWatt: There is also a proximity issue. A lot of big retailers are distant from the point of production. It is potentially reasonable to assume that they are buying something in good faith. However, take the well-publicised case of the smokies production in which people were procuring a spent yowe for £5, killing it illegally in a barn, blowtorching the carcass and selling that for £500 to ethnic communities. Hundreds of millions of pounds have been made in doing that across the UK. In that case, the retailer is much closer to the point of production as well. Therefore, we must be mindful of, first, who the retailer is and, secondly, what their proximity is to the production point.

Sharon Dowey: You referred to “proportionate sentencing outcomes” in your opening remarks, and to your use of common law rather than food law when progressing cases. Do the current laws

provide a big enough penalty to act as a deterrent, or do they need to be strengthened?

Ron McNaughton: We have only that one case to go on at the moment. We have a £600,000 tea fraud case, which was due to come up in August but will now come up later in the year. That will give us a better idea in respect of proportionate sentencing. In the DNP case, the individual put at risk members of the public and was given 37 months, which is a significant sentence. Had the individual been reported under the Food Safety Act 1990, they would not have got such a significant sentence.

Ian McWatt: Traditionally, cases that are brought under the 1990 act attract very low tariffs. Therefore, no, I do not think that the penalties are sufficient.

Sharon Dowey: What about the proceeds of crime? Are we getting money back from the proceeds of crime? You have said that people are making a lot of money. When we get a result and somebody is charged, does that money come back?

Ron McNaughton: In every case that we deal with, we must rely on Police Scotland's support to carry out a proceeds of crime investigation. All cases that go to petition will have a proceeds of crime investigation and hearing. Such moneys, as you are probably aware, go to the Scottish Government; they do not come back to FSS. That situation in England, Wales and Northern Ireland is different; their food standards body gets a proportion of that.

I think that there will be success in relation to the DNP case in particular, because Jamie George pled guilty to the charges and there has been a conviction. His proceeds of crime case will come up. To give you an example, he was selling his DNP capsules for £1 each and he was producing 10,000 of those a month. We managed to get him over a period of eight, nine or 10 months. That gives you an indication of his operations. He had probably been operating at that level for a significant period, and he has made a good living out of that. Without a shadow of doubt, the proceeds of crime legislation is a deterrent. I would want him to be dealt with so that the significant proceeds that he has gained from his criminality are taken away from him. We will look to publicise the case again to use it as a deterrent for others who might be thinking about committing crime.

Sharon Dowey: You mentioned resourcing earlier. It sounds like a technical job and you need a certain skill set. What are your resources like? Do you have enough staff? Are you able to find enough skilled people to fill the roles? We know that budgets are tight. Have you had any

conversations with the Scottish Government about on-going budgets?

Ian McWatt: Since its establishment in 2015, Food Standards Scotland has had a real-terms budgetary cut of 24 per cent. We work with local authorities, which, as Ron McNaughton said, act as the boots on the ground. We have a responsibility under the Food (Scotland) Act 2015 to report on their performance. It is fair to say that local government workers are extremely stressed. There are insufficient numbers on the ground. By 2035, we have predicted that there will be only 25 per cent of the officials that are required to deliver food law.

We have reported to ministers about and are waiting for a decision on a mitigation programme, called the Scottish authority food enforcement rebuild programme—SAFER—which is to rebuild the food law delivery environment. We are asking for a small investment that will, we hope, get us back to a place on food law delivery that we will be consistent with almost every other country that I have visited. Currently, industry in Scotland does not contribute significantly to the cost of food law delivery, whereas it does in every other country that I have been to. We believe that our business case, if successful, will help to support that.

As we saw in the horsemeat scandal, the straplines in the media were that your reputation comes in on the back of a snail, but it leaves on the back of a racehorse. It takes one incident for consumer confidence to be lost.

With Scotland being the land of food and drink, we are already facing scrutiny. Last week, I hosted the Canadian Government; a month before that, I hosted the Korean Government. I have six EU missions to assess the system. They will assess individual premises' compliance, their potential for fraud and so forth. I believe that we are under significant duress and at risk of failure. That not only has that public health issue sitting in the background; that has an immediate trade risk as well.

Ron McNaughton: From the unit's perspective, what was found back in 2013—Ian McWatt alluded to this when he spoke of turning over stones—is that, if you look for it with the right people at the right level, you will find food fraud. We can only work with what we have at the moment.

A big thing for me is prevention. We have developed a free tool that any business can use to help to identify whether they are at risk. They go through a set of statements, and are then given a score and guidance. However, we are scratching the surface with that, because most of our team are dealing with investigations and it is left to people like me to try to push forward on prevention.

It is through prevention that we will win. We are scratching the surface dealing with the individuals whom we have spoken about. We have to do what we can to publicise successes. There will always be a place for the enforcement and investigation side, but we have to try to focus on how we can shift emphasis and push more to the preventative side, because that is where we will win.

Ian McWatt: Scotland is in an interesting position globally, because a lot of the produce that we make has a premium label. We are famed for Scottish salmon and for Scotch beef. We have tools, for example, that can identify authenticity, but every time that somebody claims that a steak is not Scottish and that it is Polish or from the EU, it costs us £500 to test one sample. That is an added cost. However, it is important that we get on the front foot to protect our reputation, because we are held in high regard and we have a high standing for the fantastic quality of our products.

As Ron McNaughton said, the vast majority of what we produce is safe, but criminal actors are attracted to where they can make the biggest buck. That is replicating and defrauding the premium product that I believe that we are exposed to. That comes with the public health component as well.

10:45

The Convener: I will come in on your points about the premium reputation, particularly on food and drink production in Scotland. We know that small businesses make up a huge proportion of our economy. I am aware that, earlier this year or last year, you produced a toolkit for businesses to support them to become fraud proof. Can you say more about the toolkit?

Ron McNaughton: Last year, we launched our food crime risk profiling tool, targeting small to medium businesses. It was produced in conjunction with industry and academia. It was not something that we produced just ourselves. It was not, "This is what FSS says that you should do"; it was produced with involvement from industry and academia.

We launched that towards the latter part of last year. It is a simple, free-to-use tool that any business can sign up for. There are four sections: strategy, performance, organisation and culture. There are 10 statements in each section, and businesses have to assess their processes against those statements. They are given a score and they get a report within 20 minutes that highlights where they are vulnerable to food fraud and food crime and gives them some guidance too.

We follow that with some free workshops to talk about the specifics in more detail. We hope to

have more workshops. We will relaunch the tool in the next few months to raise awareness. If it is free, why would businesses not use it?

The Convener: We have spoken about partner agencies such as Police Scotland and the Crown Office, but there are other partners—for example, the Federation of Small Businesses—that could promote the toolkit. Are you linked into those industry bodies?

Ron McNaughton: Yes, we are linked in with all those bodies. I do not know whether you have seen it, but I appear in a video—I look a lot different, because I have longer and greyer hair than I had in it. The video lasts for about three minutes, and you also see David Thomson from the Food and Drink Federation Scotland, which is involved in promoting it. We were at the cross-party group on independent convenience stores last week, and we flagged up the free tool there as well.

We are doing everything we can to link in with whatever partnerships we can find to promote the tool and its use. There will be an issue around how we land it. The tool is to help people. It is not about FSS coming down as the big brother; it is a question of how we can help businesses protect themselves from becoming victims. That is what it is all about.

Fulton MacGregor (Coatbridge and Chryston) (SNP): Good morning, and apologies that I was late—I was attending the Citizen Participation and Public Petitions Committee.

I think that you might have already mentioned this because, since I have been in the room, you have referred to a vodka case a couple of times and it might be the one I am thinking of. Can I confirm before I ask my question: is the vodka case that you have described to the committee the one that happened in Coatbridge?

Ron McNaughton: Yes.

Fulton MacGregor: I apologise if you have gone into great detail on that. As well as my role on this committee, I am also the MSP for Coatbridge and Chryston, and I have been very aware of the case. I want to thank you and North Lanarkshire Council for your work on it. It sounds like good work was undertaken, and it helped educate me about the work that you do in partnership with the council.

I would not normally ask a direct constituency question at committee, but it could be helpful for us to understand as a whole, and I do not have the full information. What was the process and how did it come about, from point of contact—whether it was from members of the public or the store itself—to your investigation? Could you go through in some detail—not lots—how that came about? It

sounds like it could be a good example for us to understand and learn from.

The Convener: Is that information that you are able to share at this point?

Fulton MacGregor: Yes—up to what you can share.

Ron McNaughton: I can share information up to a point.

When this case initially came to our attention, it was basically the smell and the taste of the alcohol that had been produced that raised concerns with the consumer who had bought the product. They flagged it up to the local authority, which went along and dealt with it.

At that point, we did not know what was in the product—we had to test it—but we felt that it was significant enough to put out communication to consumers to flag up the fact that this product had been found and that they should buy their alcohol from reputable businesses. We gave some examples of what consumers should look for, which relates to what I mentioned earlier.

On the back of that, the sample was analysed and it came back flagging up that isopropyl was in it. At that point, we had to act to mitigate the risk to consumers. We put out what we call a food alert for action—FAFA—which is basically a call to arms for all the local authorities to say, “We need you to go out and physically look for this product in the shops”. That is what they did.

As you possibly saw, there was lots of media interest in the incident. That flagged up some more information from various parties. The information is helping the investigation and has also helped us to recover more alcohol. That is probably as much as I can tell you at the moment.

One positive from the Coatbridge incident is that individual concerned has already had their licence revoked. That happened quickly, and it demonstrates the partnership arrangement between us, the local councils and the licensing departments to make sure that action is taken. It is not just a question of investigating to get upstream and find out who is producing the product; it is a question of dealing with the individuals who are the outlet for it. Dealing with them sends out the message that, if someone deals in counterfeit alcohol, they risk losing their licence and their livelihood.

Fulton MacGregor: Thank you for that. It sounds like a good example of you and the local council—in this case, North Lanarkshire Council—working closely together to deliver a fast and effective result. When you identified that there was an issue and spread the message to other local authorities, what was the response from them? Has that been positive as well?

Ron McNaughton: I mentioned that earlier, before you arrived. So far, we have had 1,600 target visits and we have recovered about 231 bottles of counterfeit alcohol. That has happened through the local authorities going out and following the FAFA and targeting their inspections. It has mainly been in the central belt, but we have recovered bottles from eight local authorities and nine premises.

Ian McWatt: That is a helpful question. Before you arrived, I mentioned briefly that our boots on the ground are the environmental health departments in each local authority. There is a legal reason for that, because the 32 local authorities in Scotland are what are termed the competent authorities in food law. They each individually have competence to deliver food law. Food Standards Scotland is termed the central competent authority for Scotland. We oversee, report on and monitor the local authorities’ performance. That is our duty, and we are accountable to Parliament for it.

I will mention individual responses. The Crimestoppers hotline is available 365/24/7, and we received intelligence through it late on a Friday evening. As a result of that intelligence, we had to contact a local authority out of hours, and we had zero response. Multiple calls to the local authority resulted in no response whatsoever. Although we are not the competent authority, we ended up having to direct our own resources to come from Aberdeen down to the central belt and work with Police Scotland to gain access and act on the intelligence that we found. It was at the time of an old firm game, and one of the largest hauls of counterfeit bottles were found in the shop in question. Had we not acted and got there when we did, a lot of the product would have been sold and we could have been facing a significant public health issue.

Fulton MacGregor: That raises a question. You do not have to mention the individual council—I would not ask for that or expect that—but given the serious nature of your work, should there be some process in which there is a contact for you?

Ian McWatt: We have out-of-hours contacts, but some of the decision making in local government is now being taken through the lens of affordability, not what is presented as a public health risk.

Fulton MacGregor: So you have an emergency contact that you should, in theory, be able to contact.

Ian McWatt: We do and we test that. I am not sure of the last point of our testing, but when we hit the button in this incident there was no response. I am dealing with my colleagues in our local authority delivery division and senior officials

in the local authority in question to find out what has happened. We are hearing intelligence, which is not verified, that decisions are being made on the grounds of affordability and whether to pay officers overtime and be available out of hours. That is an increasing worry.

Ron McNaughton: On Saturday past, for example, we had information that a member of the public had become ill after consuming counterfeit alcohol. I had to dispatch the senior investigating officer for the investigation to Glasgow to speak to the witness and to recover the bottles. He is located in Fife. Those bottles turned out to be genuine and not connected to the investigation, but it demonstrates what we have to deal with.

I mentioned earlier that on the multi-agency tasking and delivery board, which is chaired by Police Scotland, there has been agreement to a short-life working group to look at a strategic response for Scotland. I hope that that will provide some assistance to us, so that we do not have to send our troops all over the country to deal with individual incidents. If we cannot get the local authorities, I hope that we will be able to get Police Scotland to assist, as it has done up until now when we have needed help.

Russell Findlay: Fulton MacGregor's questions about the local authority relate back to the questions I asked. You had mentioned Glasgow City Council to me as being a particular problem with getting things done. Is that the local authority that we are talking about?

Ron McNaughton: Yes.

Ian McWatt: Yes.

Russell Findlay: Thank you. This is a question of organised crime and public health. There is a protocol in place between a government agency and the biggest local authority in Scotland, and it is not answering the phone. This is not about checking the wheelie bin times; it is about public health and organised crime. It is not good enough.

Ian McWatt: It is not, but that goes back to the point that I was making. We have been reporting on the situation for some time now. This is not in Ron McNaughton's unit, but we have been making submissions and reports to ministers on the vacancy rate and the fact that we cannot get environmental health officers in Scotland. The only degree course route to becoming an environmental health officer in Scotland has now closed, so there are no routes in.

Russell Findlay: You should not have to make excuses for local authorities. They need to work out what they do with their budgets. If they have a protocol in place to pick up the phone, that should happen.

Ian McWatt: Absolutely. We are trying to support the local authorities, and we recognise that there is a lot of pressure. We are one of the few agencies that invest in training their officials, but the numbers are on a severe downward trajectory. The age profile—I can say it because I am there—is on the wrong side of 50. Food Standards Scotland is extremely concerned about the resourcing paradigm as it currently stands, which is why we developed the SAFER programme—the Scottish authorities food enforcement rebuild. However, it is only a proposal for ministers and we are awaiting ministerial decision about the funding of the programme, which would help us to fix the problem over the next two to three years.

Russell Findlay: Will you keep the committee updated on those discussions?

Ian McWatt: I would welcome that.

11:00

Ben Macpherson (Edinburgh Northern and Leith) (SNP): The enforcement that we have just discussed through environmental health—and trading standards, I imagine—is extremely important. The increase in cases is clearly a concern for us all. As well as enforcement, is there work with partners that needs to be done, or is being done, to raise greater awareness of the issues in the public domain and help with the wider deterrence that clearly must be part of the response? As you have acknowledged, most of what is produced, procured and sold is done in good faith and at high standard, but in the examples where we have bad-faith actors, how do we raise more awareness and create more deterrence?

Ron McNaughton: We have been publicising our successes when we have them and publicising the fact that we have a Scottish food crime hotline, which allows people to report issues anonymously, so there is source protection for individuals. However, you are correct that it is a question of working with partners such as those who sit on the multi-agency tasking and delivery board, which includes Police Scotland and His Majesty's Revenue and Customs. We have a multitude of information-sharing protocols in place that allow us to share intelligence with a number of agencies, including those that I have mentioned.

If I take myself back nine and bit years to when I left the police service and joined FSS for six months—which has now ended up being almost 10 years—I had never heard of food fraud. As a police officer, I had never heard of food fraud. That is the case with a lot of people: they are not aware of it, so we have to raise awareness. For me, it is a question of raising awareness among the

individuals who are working with industry, because they are the ones who will be aware of anything untoward. Unless they get ill, consumers will rarely know that they are the victims of food fraud. It is not like normal financial fraud.

Ian McWatt: There is a balance to be had as well. The vodka case is a classic example. There is keen interest in catching the people responsible, but we also have to balance the messaging from a public health perspective. Sometimes the messaging to protect the consumer can disrupt an investigation because it causes people to disappear. However, that is a call that we would make based on the risk to public health.

Could I pick up on Mr Findlay's point about keeping the committee updated? Given the interest that we have had today, we would welcome a formal arrangement with this committee. We would welcome the opportunity to provide you with an annual report from Food Standards Scotland—a short document that updates you on the key findings and the work of the organisation in the year.

The Convener: I would welcome that, and I think that other members would, too. Food crime is clearly a growing issue, and it has two aspects of criminality and of public health and harm. I think I can speak for other members when I welcome that proposal.

Ian McWatt: Thank you.

The Convener: I will bring the session to a close shortly, but I want to ask a quick question. We have spoken a lot about partner agencies. One that we have not referenced is the National Crime Agency. I presume that you link with it. Do you have a presence at the Scottish crime campus? Would that be helpful, and is it something that is being looked at?

Ron McNaughton: We looked at a presence at the Scottish crime campus for a number of years, and for a number of reasons it has never happened. I have mentioned our seat on the multi-agency tasking and delivery board, which is chaired by Police Scotland and looks at organised crime. That has been very helpful for us in making links with the partners around the table.

There has been a realisation about what we can bring to the table to assist partners. I would love to have us sitting at the Scottish crime campus; we just have not managed it yet. Unfortunately, my days of looking for favours have passed—I have been out of the service for 10 years, so it is more problematic. It is not an easy task, and I know that the people around the table at the crime campus have been reviewed.

Being part of the multi-agency tasking and delivery board is a good stop-gap. It has been very

effective for us: it helped us with the DNP case and others.

Ian McWatt: As we raise our profile in cases and demonstrate the value that our analysts and our science and policy teams can offer, the relationship will potentially be reviewed.

The Convener: Thank you. That is very helpful, and we will bear it in mind during our budget scrutiny.

I will bring this session to a close. I thank our witnesses very much for coming today. It has been an insightful session.

That concludes our public meeting, and we will now move into private session.

11:05

Meeting continued in private until 11:30.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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